

**KWAZULU-NATAL SOCIETY OF ADVOCATES**  
**HOUSING POLICY**

**FOREWORD**

1. The obligation to keep chambers (and the current framework in which that obligation is to be met) derives from:
  - a. the KZN Bar's Rules of Professional Conduct and Etiquette;
  - b. the Code of Conduct for All Legal Practitioners issued in terms of the Legal Practice Act 28 of 2014 ("the LPA"); and
  - c. the Policy on Leave of Absence, Leave to Practise from Home, Leave to Practise from Legal Centres, Door Chambers and Others which was adopted at the Special General Meeting in March 2019 (attached).

**A. MEMBERSHIP OF THE SOCIETY AND HOLDING OF CHAMBERS**

2. All members of the KwaZulu-Natal Society of Advocates ("**the Society**") are ordinarily required to practise, on a full-time basis, the profession of advocacy from chambers approved for those purposes by the Bar Council ("**the default position**").
3. The default position is best facilitated within chambers occupied by organised groups so that:
  - a. members are readily accessible to other members for purposes of facilitating mentoring, advice and practice development;
  - b. the ethical conduct of members can be reinforced by peers;
  - c. members and the Society can fulfil their mentoring duties to pupils and junior members.
4. All members of the Society are ordinarily subject to the default position unless an exemption has been granted otherwise.

5. In the absence of the grant to a member of an exemption from the default position, a failure to comply with the default position may result in sanctions being imposed against a member.

**B. MINIMUM REQUIREMENTS FOR APPROVED CHAMBERS**

**B1. NEW CHAMBERS**

6. The minimum number requirement for the establishment of chambers, in a new building is 20 members. The purpose of setting a minimum number is to prevent the undue fragmentation of the bar. This is both the position adopted in respect of new chambers established in Umhlanga and also the mid point of the proposed numbers suggested by members in the Survey on the State of the Bar (2020).
7. The minimum number for the establishment of new chambers may be adjusted from time to time by the Bar Council and relaxed in particular instances upon good cause shown.
8. Written applications to establish chambers in a previously unapproved building are to be submitted to Council. Applications must include, at least:
  - a. an indication of the number and names of members in the new chambers;
  - b. if the chambers are to have a constitution, a copy thereof;
  - c. an indication of how the chambers will assist, uplift and transform the Bar and assist in reinforcing collegiality;
  - d. an explanation as to why, if there is space available in an already approved building and the new chambers are sought to be set up in a separate building in the area, why they are not to be set up in the existing approved building.
9. The application will then be considered by council for approval.

**B2. REMOVAL OF APPROVAL**

10. If the members holding chambers in an approved building fall below 50% (rounded downward to the nearest whole number) of the required number for the establishment of new chambers, the Bar Council shall be entitled, after taking into account all applicable circumstances, and after receiving representations from affected members, to make a decision, in the best interests of the Society of Advocates, and the individual Advocates occupying the said approved building, as to whether or not the Bar Council should remove approval of the said approved building.

**C. ALLOCATION OF CHAMBERS**

11. The allocation of chambers is dealt with on an ad hoc basis, with groups making decisions as to who will join as new group members as and when vacancies arise/chambers become available.
12. While the Groups will make the ultimate decision, advertisements regarding available chambers must be made in an open and transparent manner by circular to all members.
13. Groups are required to make decisions between competing applicants having due regard to the following factors as set out in the Bar's Transformation Policy:
  - a. the achievement of a representative mix of members both in terms of gender and race;
  - b. the achievement of a representative mix of senior and junior members;
  - c. the court and membership seniority of the applicant for chambers.
14. A record should be kept of who has, and who has not, secured chambers. The records should be managed jointly by Bar Council and the Housing Committee.
15. New members who have not secured chambers by January of the year following their pupillage, should be assisted by the Housing Committee which shall ensure that all reasonable endeavours are made to assist the member in finding accommodation. Sharing of chambers in such circumstances is permissible, but not encouraged, and is subject to oversight from and conditions set by the Bar Council and in this policy. Sharing of chambers for longer than 6 months will not be allowed.

**D. EXEMPTIONS**

**D1. LEAVE OF ABSENCE**

16. The Bar Council may, on application, grant exemption to a member affording him/her a leave of absence from practising as an advocate and simultaneously dispensing with the requirement that they hold chambers.
17. A member who is on leave of absence may not practise, in the Republic of South Africa, as an advocate or in a similar profession for remuneration for the period during which they are absent.
18. The period that a member is on leave of absence will not count towards the member's seniority, unless otherwise determined in writing by the Bar Council.

**D2. DOOR MEMBERSHIP**

19. The Bar Council may, upon application by any member, exempt that member from the requirement of holding full-time chambers and allow the member to hold door chambers instead.
20. Any such application for exemption and for permission to hold door chambers must be accompanied by confirmation by the member concerned and by the group in which s/he will hold door chambers that the group will permit him/her to hold door chambers in that group.
21. Any permission from a group to a member entitling that member to hold door Chambers in the group is subject to the Bar Council permitting the member concerned to remain a member of the Society whilst holding only door membership of a group.
22. Door membership implies that the member does not hold or practise from chambers in a group.
23. Door membership is intended for the following situations as described in this policy document:

- a. where the member is an associate member;
- b. where leave has been granted to a member to practise from home;
- c. where leave has been granted to a member to practise from a legal centre or university;
- d. where a member is a full member of a constituent Bar of General Council of the Bar of South Africa and who holds chambers approved by that constituent Bar;
- e. where a member practises as an advocate or its equivalent in a foreign jurisdiction; or
- f. in exceptional circumstances and with the approval of the Bar Council upon application by the member concerned.

**D3. PRACTISE FROM HOME**

- 24. The Bar Council may, on application and in exceptional circumstances, grant an exemption to members to practise from home.
- 25. Unless the Bar Council otherwise determines, a member seeking leave to practise from home must:
  - a. at the same time apply for leave to hold door chambers; and
  - b. show that the member has been permitted by a group to hold door chambers in that group.
- 26. The exemption to practise from home will only endure for so long as the member in question remains entitled to hold door chambers in a group.
- 27. An exemption to a member entitling him/her to practise from home will not exempt the member from his/her obligation to pay to the group fees that are due and any obligation arising from holding door chambers.

28. Exceptional circumstances may apply to a member who:
- a. is wishing to enter into semi-retirement due to ill-health; or
  - b. suffers ill-health or from a disability; or
  - c. is 65 years or older; or
  - d. has demonstrated him/herself to be the primary caregiver of a dependent who has special needs.
29. Members taking maternity leave are entitled to a one year leave of absence without any loss of domestic seniority, and to have that period extended for a further period by the Bar Council on good cause shown.
30. Members on maternity leave may, at their election, practise from home during the maternity leave period, provided they obtain written consent from the KZN Bar Council to do so.
31. The provisions of paragraphs 29 and 30 above shall apply equally where a member is the primary caregiver of an adopted child.
32. Groups within the KZN Bar are encouraged to adopt maternity leave policies which regulate the occupation of chambers as well as the payment of rent, group fees and related expenses by members on maternity leave.
33. Groups are encouraged to assist members embarking on maternity leave to sub-lease their chambers for the period of time equivalent to the maternity leave taken by the member rather than allow the member on maternity leave to absorb the costs.

**D4. LEAVE TO PRACTISE FROM LEGAL CENTRES**

34. It is not undesirable to be both a member of the KZN Bar and:
- a. to be employed by and practise, with the leave of the Bar Council, as an advocate at an approved public interest legal centre (“**a legal centre**”), or

- b. to be employed at a tertiary academic university approved by the Bar Council (“**a university**”).
35. The Bar Council may, on application, grant an exemption to members to practise as an advocate whilst employed at a legal centre or university: Provided that such member is not also employed in a commercial career or occupation incompatible with the practice of the profession of advocate.
36. A member seeking leave to practise as an advocate at a legal centre or university must:
- a. at the same time apply for leave to hold door chambers or chambers; and
  - b. show that the member has been permitted by a group to hold door chambers or chambers in that group.
37. The exemption to practice from a legal centre or university will only endure for so long as the member in question remains entitled to hold door chambers or chambers in a group.
38. Members who are granted exemption to practise at a legal centre or university will continue to pay an amount equivalent to the annual subscriptions of a member of the Society of comparable standing and seniority, unless reduced or waived in writing by the Bar Council.
39. An exemption to a member entitling him/her to practise at a legal centre or university will not exempt the member concerned from his/her obligations towards his/her group, including the obligation to pay to the group such group fees as may be agreed or have been agreed as between the member and the group.

**D5. DUAL MEMBERSHIP**

40. A member of any one of the constituent Bars of the General Council of the Bar of South Africa, who wishes to become a member of the Society and to also practise from KZN, may apply to the Bar Council to do so.

41. Unless that member also applies for leave to hold door chambers, she or he will be required to hold chambers, pay full membership fees, and must fulfil all the obligations that other members of the Society are obliged to fulfil.
42. A member seeking dual membership with an exemption to hold door chambers must:
  - a. at the same time apply for leave to hold door chambers; and
  - b. show that the member has been permitted by a group to hold door chambers in that group.
43. The exemption to practise as a dual member with door chambers will only endure for so long as the member in question remains entitled to hold door chambers in a group and remains a full member in good standing of a constituent Bar of the General Council of the Bar.

**D6. EXCEPTIONAL CIRCUMSTANCES**

44. There may be circumstances which do not fall within the scope of this policy document and which may, in exceptional circumstances, permit of extensions to or exemptions outside of the policies contained in or not contemplated by this document ("**exceptional circumstances**").
45. The Bar Council must, upon application to it in relation to exceptional circumstances, consider each such application on its merits and decide whether or not to grant such application.
46. The grant, by the Bar Council, of an exemption under exceptional circumstances:
  - a. shall not be construed as an amendment to or variation of the policy contained in this document;
  - b. must be taken into account by the Bar Council in considering future applications for an exemption based on exceptional circumstances.



47. The Bar Council may, in its discretion and upon notice, terminate such honorary membership.

**D7. THE PREROGATIVE TO PERMIT EXEMPTIONS**

48. The prerogative and discretion to grant any exemption to a member as against the default position vests with the Bar Council and not with groups.
49. An exemption to the default position may, on its merits, be granted by the Bar Council upon application to it by any member or, in the event that a member is unable to make application him/herself, by that member's group on behalf of the member, or by any other person/s authorised and having the capacity to represent the member.
50. In deciding whether or not to grant an exemption to a member, the Bar Council
- a. must have regard to:
    - i. this policy document, including the transformation considerations referred to below;
    - ii. the duration of the exemption sought;
    - iii. the seniority of the member in question;
    - iv. the reason for which the exemption is sought;
    - v. the extent to which the member will remain subject to or may potentially compromise his/her ethical obligations as an advocate and as a member of the Society;
    - vi. the extent to which the member will remain subject to the control and jurisdiction of the Bar Council and the Society; and
    - vii. whether the member is in good standing with the Bar Council, including with his/her management of their Bar subscription account.

- b. may have regard to, but is not bound by:
  - i. any policy/ies of the group to which the member belongs;
  - ii. the member's personal circumstances; and
- c. must consider any submissions made by or on behalf of the member before taking a decision on whether or not to grant an exemption;

Provided further that the decision and reasons, but not the debate, of the Bar Council must be minuted by the Bar Council and communicated in writing to the member or to the person/group who made application on the member's behalf.

- 51. The Bar Council may, within their discretion, impose conditions upon the grant of an exemption, provided that in granting such conditions the Bar Council must have regard to such conditions as may previously have been imposed in comparable circumstances.
- 52. An exemption to the default position will not be granted by the Bar Council where the purpose for which the exemption is sought is incompatible with the continued practice of the profession of an advocate in the Republic of South Africa and the exceptions permitted under this policy document:
  - a. so as to permit the member concerned to take up full time commercial career or occupation elsewhere;
  - b. under circumstances where the member has no intention of again practising as an advocate in the Republic of South Africa; or
  - c. for a reason otherwise incompatible with the practice of advocate in the Republic of South Africa.
- 53. The exemption granted in accordance with this policy document or under the rules may be revoked by the Bar Council at its discretion: Provided that before any such exemption is revoked the member concerned or, in his/her absence, his/her group or the person authorised and having the capacity to represent the member is

given notice of the intended revocation and is afforded an opportunity to make representations why the exemption should not be revoked.

54. Any exemption to the default position may be granted for a specified period not exceeding 12 months at a time. Upon the expiry of the period specified, and in the absence of any renewal of the exemption application, the exemption shall automatically lapse
55. An exemption may, on application to the Bar Council, be renewed
  - a. for a further period as may be determined but not exceeding 12 months at a time; and
  - b. subject to this policy document and the local rules.

**D8. CONTINUED EXEMPTIONS**

56. All exceptions and exemptions that have previously been granted by the Bar Council, to any member prior to the adoption of this policy will remain in place on the terms on which it was granted to the individual member concerned: Provided that: the exemption or exception so granted will not endure for more than 12 months from the date of the adoption of this policy.
57. Within 12 months of the adoption of this policy all previous exemptions and exceptions not granted under this policy will lapse, subject to the right of a member to apply for an exemption under this policy.

**D9. SHARING OF CHAMBERS**

58. Junior members of 0 to 5 years standing are permitted to share primary chambers until they have completed their fifth year in practice.
59. The Bar Council may allow members of more than five years standing to share primary chambers for a period of no longer than 12 months.
60. Any member of more than five years standing who wishes to share primary chambers must make written application to the Bar Council setting out:

- a. the reasons why they are unable to maintain chambers on their own;
  - b. the proposed duration of the sharing arrangement subject to a maximum of 12 months;
  - c. the consent of the member who has agreed to share chambers with the applicant; and
  - d. the consent of the group and, where necessary, the landlord.
61. The 12 month period referred to in paragraph 59 above may be extended on written application to the Bar Council setting out the criteria referred to in paragraphs 60a to 60d above.
- 61A. Any permission given by the Bar Council to a member of more than five years standing to share primary chambers must be in writing.
- 61B. No more than two persons may share one set of primary chambers.
- 61C. It is the duty of the group permitting the sharing of primary chambers and the sharing members to notify the Bar Council of the arrangement in writing.

**E. AMENDMENT TO RULES**

58. The KZN Bar's Rules of Etiquette presently provide an exemption from the obligation to hold chambers only "*where such an exemption from the rule is requested on account of the birth or impending birth of a child to such member, for the purpose of caring for the child.*"
59. The Rules should be amended insofar as they are inconsistent with this policy.

**F. GENERAL**

60. A member who wishes to resign from the Society must vacate his/her chambers prior to the effective date of resignation and must provide the Bar Council with written proof in their letter of intention to resign that they have discharged or will have discharged all their financial obligations to their group, or made arrangements to discharge their financial obligations to their group.
61. Members who intend to practice as independent advocates and/or with trust accounts are not entitled to hold or retain premises at a set of chambers approved by the Bar Council.
62. Members who wish to resign from the Society in order to practice as independent advocates and/or with trust accounts are obliged to disclose their intention to do so to the Bar Council in their letter noting their intention to resign.